

1 THE HONORABLE RICHARD A. JONES  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

8 OBY LILLIAN DANIELLE OBUORA-  
NWALAKOR,

9 Plaintiff,

10 v.

11 UNITED STATES POSTAL SERVICE, *et.*  
12 *al.*

13 Defendants.

Case No. 2:22-cv-01489-RAJ

**ORDER GRANTING MOTION  
TO DISMISS**

14  
15 **I. INTRODUCTION**

16 THIS MATTER comes before the Court on Defendant United States Postal  
17 Service's ("USPS") motion to dismiss for lack of subject matter jurisdiction ("Motion").  
18 Dkt. # 9. For the reasons below, the Court **GRANTS** the motion.

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20 **II. BACKGROUND**

21 On October 20, 2022, Plaintiff filed a complaint for personal injury and damages  
22 ("Complaint") stemming from an assault that occurred on February 9, 2022, at a USPS  
23 Processing Center. Dkt. # 1. Plaintiff asserts claims of assault and battery against co-  
24 defendant Roxanne Tone, as well as a claim for premises liability against co-defendant  
25 USPS for negligently managing the workplace where the assault took place. *Id.* at ¶¶ 6.1-  
26 8.7. Plaintiff also makes a claim against co-defendants John and Jane Doe 1-5, unnamed  
27 USPS employees, for failing to intervene during the assault. *Id.* at ¶ 8.8.

28 On February 9, 2022, Plaintiff was working as a Parcel Post Distributor at a USPS

1 Processing Center in Tukwila, Washington, when she was assaulted by co-defendant  
 2 Roxanne Tone. *Id.* at ¶¶ 1, 5.3-5.5, 5.8-5.10. Plaintiff claims that violence had “become a  
 3 problem” at this Processing Center and that USPS negligently failed to prevent “non-  
 4 employees or employees from other branches from accessing restricted areas and assaulting  
 5 other employees of Defendant USPS.” *Id.* at ¶ 8.6 As a result of the assault, Plaintiff  
 6 sustained physical and emotional injuries and wage loss. *Id.* at ¶¶ 5.14, 5.16, 5.18, 5.20-  
 7 5.21.

8 On February 11, 2022, Plaintiff filed a claim with the Department of Labor’s Office  
 9 of Workers’ Compensation Programs (“OWCP”) alleging “[p]ain, bruising, swelling, [and]  
 10 double vision” resulting from the February 9th “assault in the workplace.” Dkt. # 9, Ex. 1.  
 11 On March 15, 2022, the OWCP accepted Plaintiff’s claim. *Id.* at Ex. 2.

12 As of January 23, 2023, the OWCP has paid \$2,621.36 worth of medical bills, *Id.*  
 13 at Ex. 4, and \$23,034.20 worth of lost wages associated with the assault. *Id.* at Ex. 5.

### 14 III. LEGAL STANDARD

15 Federal courts are tribunals of limited jurisdiction and may only hear cases  
 16 authorized by the Constitution or a statutory grant. *Kokkonen v. Guardian Life Ins. Co. of*  
*America*, 511 U.S. 375, 377 (1994). The burden of establishing subject-matter jurisdiction  
 17 rests upon the party seeking to invoke federal jurisdiction. *Id.* Once it is determined that  
 18 a federal court lacks subject-matter jurisdiction, the court has no choice but to dismiss the  
 19 suit. *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006); Fed. R. Civ. P. 12(h)(3) (“If the  
 20 court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss  
 21 the action.”).

22 A party may bring a factual challenge to subject-matter jurisdiction, and in such  
 23 cases the court may consider materials beyond the complaint. *PW Arms, Inc. v. United*  
*States*, 186 F. Supp. 3d 1137, 1142 (W.D. Wash. 2016) (citing *Savage v. Glendale Union*  
*High Sch.*, 343 F.3d 1036, 1039 n. 2 (9th Cir. 2003); *see also McCarthy v. United States*,  
 24 850 F.2d 558, 560 (9th Cir. 1988) (“Moreover, when considering a motion to dismiss  
 25 pursuant to Rule 12(b)(1) the district court is not restricted to the face of the pleadings, but  
 26 ORDER – 2

1 may review any evidence, such as affidavits and testimony, to resolve factual disputes  
 2 concerning the existence of jurisdiction.”).

#### 3 IV. DISCUSSION

4 USPS argues that Plaintiff’s claims against them should be dismissed because (1)  
 5 the United States is the proper defendant in an FTCA claim, (2) the Federal Employees’  
 6 Compensation Act (“FECA”) preempts relief under the FTCA, and (3) Plaintiff’s claims  
 7 are barred by the intentional tort exception of the FTCA. *See* Dkt. # 9. The Court will  
 address these arguments below.

##### 8 A. FECA Preemption

9 USPS argues that the FTCA claims must be dismissed because Plaintiff’s injuries  
 10 have already been accepted under the FECA, therefore, the FECA preempts recovery  
 11 under the FTCA. *Id.* at 5. In response, Plaintiff argues that the Court does not lack  
 12 jurisdiction for the FTCA claim Plaintiff’s injuries were not sustained while performing  
 13 her employment duties. Dkt. # 10 at 5.

14 Plaintiff’s argument fails. Compensation is available under the FECA if the  
 15 plaintiff can show disability or death resulting from personal injury sustained while in the  
 16 performance of their employment duties. *Moe v. United States*, 326 F.3d 1065, 1068 (9th  
 17 Cir. 2003). However, the Ninth Circuit has held that “if compensation is available under  
 18 the FECA, all other statutory remedies for claims arising under the same facts are  
 19 preempted.” *Id.* A plaintiff need only allege “a colorable claim under FECA for our  
 20 courts to lose jurisdiction over an FTCA action.” *Id.*

21 Here, Plaintiff alleges a colorable claim under the FECA. It is undisputed that  
 22 Plaintiff became disabled from the physical injuries sustained from the assault. Dkt. # 1  
 ¶¶ 5.14, 5.16, 5.18, 5.20-5.21. However, Plaintiff argues her injuries “were unrelated to  
 23 her work except for the fact that it happened at her work.” Dkt. # 10 at 5. But the FECA  
 24 does not limit claims to injuries that were caused by the employee’s job-related duties.  
 25 *Moe*, 326 F.3d at 1069. In fact, injuries sustained at work that are unrelated to  
 26 employment duties can still be considered to have occurred “while in performance of  
 27 one’s duties” because they occurred at work. *See Id.* at 1070 (holding that the injuries

1 sustained from a workplace shooting occurred while in the performance of plaintiff's  
2 duties because "her job placed her in this situation").

3 The exact argument Plaintiff uses to contend she does not have an FECA claim is  
4 the exact reason she does. The assault and Plaintiff's subsequent injuries occurred at her  
5 place of work. Dkt. # 1 ¶¶ 5.3-5.11. Therefore, the argument that Plaintiff's injuries did  
6 not result from assigned work tasks is without merit. Because Plaintiff's injuries occurred  
7 at her workplace, they are considered to have occurred while in the performance of her  
8 duties. *See Moe*, 326 F.3d 1065. As such, the FECA is her sole remedy, and the Court  
9 lacks subject matter jurisdiction over her FTCA claims.<sup>1</sup>

10 Because the FECA preempts recovery under the FTCA, addressing the additional  
11 arguments presented by USPS in their Motion would be futile. The Court, therefore, will  
12 not consider them and dismiss Plaintiff's FTCA claim against USPS with prejudice.

## 12 V. CONCLUSION

13 For the reasons stated above, the Court **GRANTS** Defendant USPS's Motion.  
14 Dkt. # 9. Plaintiff's complaint is dismissed with prejudice.

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16 DATED this 27th day of April, 2023.

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26 The Honorable Richard A. Jones  
27 United States District Judge  
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25 <sup>1</sup> In Plaintiff's response, Plaintiff petitioned the Court to deny the Motion and allow  
26 Plaintiff to amend her complaint with the supplemental fact that the Department of Labor  
27 ("DOL") accepted her claim after filing this lawsuit, therefore, the FECA cannot preempt the  
FTCA. *See* Dkt. # 10 at 9. However, because Plaintiff has a colorable FECA claim, the date  
at which the DOL accepted her claim is irrelevant for the purposes of this Motion.